PETER J. SMITH
United States Attorney
BRUCE D. BRANDLER
Assistant United States Attorney
Chief, Criminal Division
CHRISTY H. FAWCETT (PA Bar No. 35067)
Assistant United States Attorney
KIM DOUGLAS DANIEL (PA Bar No. 31038)
Assistant United States Attorney
228 Walnut Street, Suite 220
P.O. Box 11754
Harrisburg, Pennsylvania 17108
Telephone: (717) 221-4482
Facsimile: (717) 221-4493
E-mail: Christy.Fawcett@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALMUNTASSER HBAIU

Defendant.

CR No. 13-665(D)-JAK

GOVERNMENT'S RESPONSE TO DEFENDANT HBAIU'S LETTER ATTACHED TO SENTENCING MEMORANDUM (Dkt. Entry 413)

Sentencing Date: 02/11/2016
Sentencing Time: 8:30 a.m.
Place: Courtroom 750

The United States of America, by and through its counsel of record, the United States Attorney for the Middle District of Pennsylvania, hereby submits its Response to Defendant Hbaiu's Letter Attached to Sentencing Memorandum (Dkt. Entry 413).

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February 10, 2016 Respectfully submitted,

PETER J. SMITH
United States Attorney

BRUCE D. BRANDLER
Assistant United States Attorney
Chief, Criminal Division

/s/ Christy H. Fawcett
CHRISTY H. FAWCETT
Assistant United States Attorney

/s/ Kim Douglas Daniel
KIM DOUGLAS DANIEL
Assistant United States Attorney

Attorneys for Plaintiff
UNITED STATES OF AMERICA

PETER J. SMITH
United States Attorney
BRUCE D. BRANDLER
Assistant United States Attorney
Chief, Criminal Division
CHRISTY H. FAWCETT (PA Bar No. 35067)
Assistant United States Attorney
KIM DOUGLAS DANIEL (PA Bar No. 31038)
Assistant United States Attorney
228 Walnut Street, Suite 220
P.O. Box 11754
Harrisburg, Pennsylvania 17108
Telephone: (717) 221-4482
Facsimile: (717) 221-4493
E-mail: Christy.Fawcett@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. ALMUNTASSER HBAIU Defendant.	CR No. 13-665(D)-JAK GOVERNMENT'S RESPONSE TO DEFENDANT HBAIU'S LETTER ATTACHED TO SENTENCING MEMORANDUM (Dkt. Entry 413) Sentencing Date: 02/11/2016 Sentencing Time: 8:30 a.m. Place: Courtroom 750

GOVERNMENT'S RESPONSE TO DEFENDANT HBAIU'S LETTER ATTACHED TO SENTENCING MEMORANDUM (Dkt.Entry 413)

I. Introduction

Hbaiu's Sentencing Memorandum included a 12-page, single-spaced letter ("Letter") from Hbaiu. See Dkt. Entry 413. In this letter, Hbaiu made a number of mischaracterizations and misrepresentations. In this response, the government seeks to address—prior to sentencing—a few of the most serious mischaracterizations and misrepresentations.

In so doing, the government reiterates its recommendation, contained in paragraph 5(g) of the plea agreement, that imposition of a 24-month sentence of incarceration is appropriate in this case. It is submitted, however, that Hbaiu's disingenuous description of his background and the facts and circumstances of his criminal conduct contained in his letter to the Court should not be the basis for a sentence of anything less than 24 months.

II. HBAIU'S CREDIBILITY

The government first suggests that the representations and characterizations contained in Hbaiu's letter to the Court must be viewed in light of whether Hbaiu is a reliable source. In that regard, Hbaiu's representations concerning his male enhancement products were found not credible by Magistrate Judge Kenton in an order that was filed at docket entry 137 in this case. Magistrate Judge Kenton stated, in part, that Hbaiu's "representations regarding manufacturing and distribution of his male enhancement products are entirely without credibility". (Dkt. Entry 137, 8.)

III. HBAIU'S REPRESENTATIONS AND INFERENCES AS TO HOW HIS PRODUCT BECAME TAINTED WITH THE ACTIVE PHARMACEUTICAL INGREDIENT.

A theme found throughout Hbaiu's letter to the Court is that distribution of tainted male enhancement products under his label is due to "counterfeiters" and that people returned counterfeit product to his warehouse where it was inadvertently mixed with his "legitimate" product. See Letter, 9-10.

As depicted in the attached Government Exhibit Number 1, law enforcement agents made controlled purchases or otherwise acquired Hbaiu's Mojo Nights, Lot #1MM0211, over a 14-month period. The product was obtained throughout the United States—in Illinois, Georgia, Pennsylvania, and California. In each instance, the product tested positive for the active pharmaceutical ingredients.

Similarly, investigators made controlled purchases or otherwise obtained samples Hbaiu's Libigrow Lot #791115 product line over a nine-month period. Again, these products came from the wide-ranging geographic area of Pennsylvania, Florida, and California and again each sample was found to contain the active pharmaceutical ingredients. See Government Exhibit 2.

During the period of the investigation, 17 different undercover purchases were made that were traceable to Hbaiu's businesses, either directly or through distributors tied directly to Hbaiu. All male enhancement products tested positive for the presence of the active pharmaceutical ingredient.

Perhaps most damning to Hbaiu's inference that counterfeiters were at the root of his legal problems is the pills that were packaged under the Kamasutra and Matador labels that were seized from his warehouse in Commerce, California, on December 5, 2012. In a document prepared by Matthew Rycyk for the FDA recall and attached hereto as Government's Exhibit 3, Rycyk lists these products as being manufactured and seized (by the government) but never distributed.

Yet samples of these products, which had never been sold or distributed to the public, also tested positive for the active pharmaceutical ingredients. Such a result cannot be blamed on "counterfeiters" because the products were never on the market.

IV. HBAIU'S CLAIM THAT HE WAS CONDUCTING A MASSIVE ALL-OUT RECALL OF DIETARY SUPPLEMENTS.

Hbaiu hired Matthew Rycyk, a regulatory consultant (see Government Exhibit 4), purportedly to conduct a recall of his supplement products from the marketplace. He claims this occurred in October 2012, prior to the search at the warehouse and Hbaiu's arrest. See Letter, 9. Investigators interviewed Rycyk on two separate occasions prior to Hbaiu's guilty plea. Rycyk was recently contacted again by telephone. On each of these three occasions, Rycyk stated that the topic of a recall did not come up until after the warehouse was searched in December 2012. Further, investigators found no evidence that Hbaiu contacted his direct customers to return inventory before the voluntary recall through FDA was announced on December 17, 2012.

The October 2012 time frame is significant, but not for a recall that did not happen. Rather, on October 11, 2012, co-defendant Abdallah Nada's business was inspected by FDA. Nada was the exclusive distributor for Hbaiu's Mojo Nights product line. Thus, Hbaiu knew it was important to appear to be non-complicit in the evidence of criminal activity found at Nada's business.

A text from co-defendant Kang to Hbaiu dated October 15, 2012, is further evidence that Hbaiu understood in October 2012 that he needed to appear to be a legitimate business person. On October 15, 2012, Kang texted Hbaiu that "I told the guy at the factory to prepare for visiting. Don't worry…" A copy of this text message is attached hereto as Government's Exhibit 5.

Also during this same time frame, Hbaiu's sister ordered a large amount of fencing materials that were to be picked up by Chris Catone. See Government Exhibit 6. These materials were used to build the "secret room" investigators discovered when the searched Hbaiu's warehouse on December 5, 2012.

Hbaiu now claims that the "secret room" was used to store product returned to his company, some of which was original and some counterfeit. See Letter, 10. But several pieces of government evidence refute this self-serving claim.

Moreover, the investigation has established that Hbaiu gave conflicting accounts of what was to be contained in the "secret room". Hbaiu told Catone, who partially constructed the "secret room", that it was to be a "vault" where contraband/counterfeit product was to be isolated. In contrast, Hbaiu told his production manager Angelo Dia that product that was packaged and ready to be shipped out should be maintained inside the secret room.

When investigators entered the room on December 5, 2012, it contained packaging material and a station for packaging product. The packaging material was similar to the packaging on the tainted product agents purchased through the internet. This evidence corroborates Dia's information that the room was used to store product that was packaged and ready to be shipped out.

Searching agents did find several boxes clearly marked "Counterfeit Do Not Sell." But these boxes were not found in the "secret room"; they were found on the opposite side of the warehouse. See Government Exhibt 7.

Finally, Hbaiu claims that FDA conducted two surprise inspections on his facilities and his supplier's facilities in 2010 and 2011. Investigators have checked FDA records and found no records of prior inspections on Hbaiu's facilities or his supplier's facilities.

V. HBAIU'S CLAIM THAT AHED HBAIU FLED NOT TO AVOID PROSECUTION, BUT TO PURSUE A NEW LIFE IN DUBAI.

In his letter to the Court, Hbaiu makes a number of representations concerning his brother and co-conspirator Ahed Hbaiu, who is a fugitive. Prominent among these representations is that Ahed Hbaiu fled not to avoid apprehension, but to make a new life for himself without being dogged by his criminal record. See Letter, 8. He claims that Ahed Hbaiu arrived in Dubai weeks before the Grand Jury returned a superseding indictment, which, for the first time, included criminal charges against him in this case. See Letter, 8.

Hbaiu's claim is belied by an e-mail from Ahed Hbaiu's counsel to the government that occurred February 26, 2013. In that communication, Ahed Hbaiu's counsel confirms that his client is not interested in cooperating with the government before a superseding indictment was considered by the grand jury. The government confirmed that Ahed Hbaiu left the country on Qatar Airlines out of Dulles Airport on March 5, 2013. The superseding indictment was returned by the Grand Jury on March 8, 2013. See MDPA Dkt. Entry 50.

VI. HBAIU'S CLAIMS THAT HE CAME FROM AN IMPOVERISHED BACKGROUND AND THAT HE HAD NO POSITIVE RELATIONSHIP WITH HIS FATHER.

In his letter to the Court, Hbaiu repeatedly references his family's lack of financial resources. See Letter, 1-3. This claim, too, is contradicted by the evidence.

In April 2001, Hbaiu and Ahed Hbaiu were detained at Newark International Airport. Hbaiu carried a briefcase which contained $125,000 in U.S. currency, wrapped in 22 bundles. The currency was seized after Hbaiu and his brother gave conflicting accounts about the cash. Hbaiu had recently graduated from Dickinson College and Ahed Hbaiu was a student at Columbia at the time.

A month later, Ahed Hbaiu was arrested at JFK International Airport with $15,000 cash. He told law enforcement officials that Almuntasser Hbaiu gave him the cash. In July 2001, Ahed Hbaiu was stopped in Kansas in possession of approximately 2,000 pounds of ketamine, a controlled substance. Ahed Hbaiu displayed Almuntasser Hbaiu's identification during the stop. See MDPA Dkt. Entry 33.

As to Hbaiu's claim that he has no meaningful relationship with his father, bank records establish that he and his father had a jointly-titled bank account until that account was seized by law enforcement agents in December 2012. See Government Exhibit 8.

The above-recited information contradicts Hbaiu's apparent inference that his criminal conduct is mitigated by his impoverished background and lack of a father figure.

VII. CONCLUSION

As previously argued, Hbaiu's misrepresentations and mischaracterizations do not support a sentence that is less than the sentence recommended by the parties. Rather, imposition of the 24-month sentence of incarceration negotiated and agreed to by the parties, as well as $60,000 fine, three-year term of supervised release, and $125 special assessment, is an appropriate disposition in this case.

Dated: February 10, 2016

Respectfully submitted,

PETER J. SMITH
United States Attorney

BRUCE D. BRANDLER
Assistant United States Attorney
Chief, Criminal Division

/s/ Christy H. Fawcett
CHRISTY H. FAWCETT
Assistant United States Attorney

/s/ Kim Douglas Daniel
KIM DOUGLAS DANIEL
Assistant United States Attorney

Attorneys for Plaintiff
UNITED STATES OF AMERICA

PETER J. SMITH
United States Attorney
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Assistant United States Attorney
Chief, Criminal Division
CHRISTY H. FAWCETT (PA Bar No. 35067)
Assistant United States Attorney
KIM DOUGLAS DANIEL (PA Bar No. 31038)
Assistant United States Attorney
228 Walnut Street, Suite 220
P.O. Box 11754
Harrisburg, Pennsylvania 17108
Telephone: (717) 221-4482
Facsimile: (717) 221-4493
E-mail: Christy.Fawcett@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

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UNITED STATES OF AMERICA, Plaintiff, v. ALMUNTASSER HBAIU, Defendant.	CR No. 13-665(D)-JAK CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

That this 10th day of February 2016, she served a copy of the attached:

GOVERNMENT'S RESPONSE TO DEFENDANT HBAIU'S LETTER ATTACHED TO SENTENCING MEMORANDUM (Dkt. Entry 413)

by electronic means to the email addresses set forth below.

Paul J. Cambria, Jr., Esquire – pcambria@lglaw.com

/s/ Christina L. Garber

CHRISTINA L. GARBER
Legal Assistant